

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

United States Securities and Exchange
Commission,

Court File No. 4:15-cv-053

Plaintiff,

vs.

**FIRST INTERIM FEE APPLICATION
FOR PROFESSIONAL FEES AND
EXPENSES OF RECEIVER GARY
HANSEN**

North Dakota Developments, LLC, Robert L.
Gavin, and Daniel Hogan,

Defendants,

and

North Dakota Developments Property
Management LLC, Great American Lodge
LLC, NDD Holdings 1 LLC, NDD Holdings
2 LLC, NDD Modular LLC, Augusta
Exploration, LLC, and Ames Engineering &
Development Services LLC,

Relief Defendants.

For his First Interim Fee Application for Professional Fees and Expenses of Receiver Gary Hansen (“Application”), Receiver Gary Hansen (the “Receiver”) states:

A. Information about the Applicant and the Application

The Receiver was appointed on May 18, 2015 pursuant to the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction and Appointment of Receiver, Asset Freeze, and other Equitable Relief [Dkt. No. 20] (“Receiver Order”). This First Interim Fee Application covers services provided by the Receiver and his law firm, known as Oppenheimer Wolff & Donnelly LLP when he was first appointed and now known as Fox Rothschild LLP (“Fox Rothschild”), from May 18, 2015 through November 30, 2016. The Receiver’s usual practice is to submit regular fee applications to the Court for its consideration. The Receiver refrained from doing so here because he determined it was more important to use the very limited receivership funds to marshal and preserve assets. As detailed below, significant additional funds have recently been brought into the receivership and additional funds are expected. As such, the Receiver anticipates making regular fee applications to the Court for the remainder of the receivership.

Pursuant to the Receiver’s agreement with the United States Securities and Exchange Commission (“SEC”), the Receiver reduced his hourly rate for this matter to \$525. In addition, the rate of Ranelle Leier was reduced to \$400 per hour. All other rates were reduced by ten percent, with a cap of \$525. Below is a list of the names and hourly rates of all professionals and paraprofessionals at Fox Rothschild who have provided services to the Receivership.

<u>Timekeeper</u>	<u>2015 Rate</u>	<u>2016 Rate</u>
Gary Hansen	\$525.00	\$525.00
Lloyd G. Kepple II	\$486.00	

Phillip Martin		\$450.00
Ranelle Leier	\$400.00	\$400.00
David Galle	\$373.50	\$405.00
Matthew Lasley	\$337.50	\$351.00
Cynthia Topel	\$310.50	
Tyler Olson		\$306.00
Matthew Mason		\$270.00
Carrie Anderson	\$265.50	
Nicholas Monson	\$265.50	\$288.00
Bonnie Kennedy	\$261.00	
Deanna Counsell		\$261.00
Colleen McGarry		\$256.50
Alex Rubenstein	\$252.00	\$274.50
Peter Stiteler	\$252.00	\$274.50
Thomas Moran		\$229.50
Samuel Tunheim	\$189.00	
Jennifer McGaffey	\$189.00	
Stephen Overby	\$171.00	\$175.50
Mae Kirby	\$166.50	
Cheryl C. Grose	\$157.50	
LeeAnn Carlson	\$139.50	
Jennie Frith		\$135.00
Andrew Juell		\$112.50

B. Status Update

Since his appointment, the Receiver has extensively investigated the available assets of the receivership entities. The identified assets are far less than the approximately \$60 million contributed by investors. The Receiver has also spent significant time communicating with creditors of North Dakota Developments, LLC (“NDD”) and the other receivership entities, as well as the defrauded investors in NDD. Although the Receiver was able to negotiate settlements with certain creditors resulting in additional moneys being brought into the receivership, most of these efforts did not necessarily generate funds for the receivership. Nonetheless, the Receiver viewed his communications with creditors and investors as important services to be provided as part of the receivership.

The Receiver recently closed the transaction for the sale of the Great American Lodge – Watford West assets. Pursuant to the purchase agreement, the purchaser will pay a net purchase price of \$1,385,325.00 over a period of 18 months. The Receiver continues to market the remaining receivership assets. The primary remaining asset is the man camp located in Culbertson, Montana. This man camp was never operational but approximately 132 individual housing units are located on the property. The Receiver also continues to resolve claims of major non-investor creditors which claim a secured position in some receivership assets.

As of the date of this filing, the receivership has approximately \$1,200,000 in cash in its bank account. The vast majority of this amount was recently received by the Receiver. For example, in the last quarter of 2016, the Receiver received the following payments:

- \$350,000.00 as the first installment payment from the sale of the Watford West assets;

- \$200,000 pursuant to a settlement agreement with creditor FX Drilling Company related to an escrow account; and
- Two payments totaling \$437,333.37 as the receivership's share of the settlement of the class action lawsuit brought on behalf of investors against the law firm of Pearce & Durick related to that firm's role in the North Dakota Developments, LLC's man camp developments.

The Receiver has spent approximately \$80,000.00 in administration of the receivership. The vast majority of these expenses fall into three main categories: (1) fees and expenses related to patrolling and upkeep at the Watford West and Culbertson sites; (2) fees paid for appraisals of receivership assets; and (3) the payment of property taxes.

The Receiver continues to compile creditor claims against the receivership entities. Exclusive of investor claims, the Receiver is currently aware of creditor claims totaling in excess of \$2 million. To date, the Receiver has not paid any creditor claims. Instead, once the receivership assets are liquidated, the Receiver will propose a distribution plan to the Court, which will include a process for notice to all known and unknown claimants and an opportunity for such claimants to be heard. While the final installment payment related to the sale of the Watford West assets is due no later than May 21, 2018, the Receiver anticipates submitting a proposed distribution plan prior to that date.

C. Current Fees and Expenses

This is the Receiver's first fee application. The Receiver is requesting approval from the Court for the payment of attorney's fees in the amount of \$501,806.30 and expenses in the amount of \$17,235.39 for the time period May 18, 2015 through November 30, 2016. Prior to the submission of the Application to the Court, the Receiver provided the SEC copies of the

Application and the Receiver's billing statements to the SEC for its review and comment. The Receiver is also submitting the Receiver's billing statements to the Court for *in camera* review.

The chart below sets forth the billing professional or paraprofessional, the total hours billed by each person, and the total amount of billing for each person.

<u>Timekeeper</u>	<u>Total Hours</u>	<u>Total Billing</u>
Gary Hansen	284.10	\$149,152.50
Lloyd G. Kepple II	0.50	\$243.00
Phillip Martin	29.30	\$13,185.00
Ranelle Leier	709.10	\$283,640.00
David Galle	31.50	\$11,891.25
Matthew Lasley	6.00	\$2,085.75
Cynthia Topel	1.40	\$434.70
Tyler Olson	3.80	\$1,162.80
Matthew Mason	4.80	\$1,296.00
Carrie Anderson	8.50	\$2,256.75
Nicholas Monson	10.10	\$2,695.05
Bonnie Kennedy	3.70	\$965.70
Deanna Counsell	0.90	\$234.90
Colleen McGarry	5.10	\$1,308.15
Alex Rubenstein	25.60	\$6,916.95
Peter Stiteler	36.80	\$9,842.85
Thomas Moran	16.60	\$3,809.70
Samuel Tunheim	16.80	\$3,175.20
Jennifer McGaffey	16.50	\$3,118.50
Stephen Overby	17.30	\$2,964.15
Mae Kirby	0.30	\$49.95
Cheryl C. Grose	0.50	\$78.75
LeeAnn Carlson	4.10	\$571.95
Jennie Frith	3.80	\$513.00
Andrew Juell	1.90	\$213.75
	1239.00	\$501,806.30

The expenses for which the Receiver seeks reimbursement are summarized in the chart below.

Expenses - 5/18/2015 - 11/30/2016	
<u>Category</u>	<u>Amount</u>
Court/filing fees	\$540.80
Electronic research	\$2,206.81
Photocopies (440 copies)	\$66.00
Courier	\$457.77
Teleconference Services	\$14.48
Travel expenses	\$3,102.45
Lien/title searches	\$660.00
Business reinstatement fees	\$295.00
Checks for receivership account	\$147.73
Electronic database creation and storage for records	\$9,744.35
TOTAL	\$17,235.39

The Receiver's billing statements provide detailed time entries describing the work performed by each timekeeper and include additional details regarding the expenses for which the Receiver seeks reimbursement. In support of this Application, the Receiver has also submitted a Certification indicating *inter alia* that all of the fees and expenses for which he is seeking reimbursement are true and accurate and that such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed.

Pursuant to the Billing Instructions provided to the Receiver by the SEC, the Receiver acknowledges that, to the extent requested by the SEC, this Application may be subject to a 20% holdback of the requested fees and expenses, and that the total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership. Based upon discussions with the SEC, the Receiver understands that the SEC will request the Court impose a 20% holdback. The Receiver

has no objection to this request. Therefore, the Receiver respectfully requests the Court to authorize payment to the Receiver in amount of \$415,233.35. The remaining 20% of the fees and expenses requested as part of this Application will be held by the Receiver in a segregated account, payment of which will be considered by the Court with the Receiver's final fee application.

Dated: January 11, 2017

FOX ROTHSCHILD LLP

By: s/ Gary Hansen

Gary Hansen (MN #40617) admitted *pro hac vice*

Ranelle Leier (MN #277587) admitted *pro hac vice*

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**RECEIVER AND ATTORNEY FOR RECEIVER FOR
DEFENDANT NORTH DAKOTA DEVELOPMENTS,
LLC AND RELIEF DEFENDANTS**